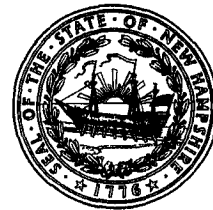




The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

May 12, 2006

Comac Pump & Well, LLC  
Attn: Scott M. Costa  
13 New Boston Road  
Kingston, NH 03848

Re: Docket No. AF 05-091 – Settlement Agreement

Dear Mr. Costa:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

**COPY**  
Michael P. Selafani,  
Legal Assistant

cc: Harry T. Stewart, P.E., Director, Water Division  
Gretchen R. Hamel, Administrator, DES Legal Unit  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
DES Public Information Officer  
Rick Schofield, DES WD

Scott M. Costa  
Comac Pump & Well, LLC  
13 New Boston Road  
Kingston, NH 03848

Re: Well constructed at 176 Stevens Hill Road  
Nottingham, NH 03290

**ADMINISTRATIVE FINE**

**No. AF 05-091**

**MOTION TO ACCEPT SETTLEMENT AGREEMENT**

NOW COME the Department of Environmental Services, Water Division ("the Division") and Scott M. Costa, and Comac Pump & Well, LLC parties to the above-captioned matter, and stipulate to the following:

1. RSA 482-B regulates water well contractors and pump installers and establishes the NH Water Well Board ("Board"). Pursuant to rulemaking authority conferred by RSA 482-B:4, the Board has adopted rules to implement this regulatory program (We 100 to 1000, "Water Well Rules"). Under RSA 482-B:8 and :16, the Department of Environmental Services ("DES") has concurrent authority with the Board to enforce RSA 482-B and the Water Well Rules.
2. RSA 482-B:16, II authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 for each offense for violations of RSA 482-B or of any rule adopted or license issued under that statute. Pursuant to rulemaking authority contained therein, the Commissioner has adopted Env-C 616 to establish the schedule of fines for such violations.
3. Scott M. Costa is a licensed water well contractor in the state of New Hampshire, holding license No. 253, and being a member of and working for Comac Pump & Well, LLC.
4. On May 19, 2005 the Division received a written complaint from Paul Comeau regarding the bedrock well constructed by Comac Pump & Well, LLC at his residence located at 176 Stevens Hill Road in Nottingham, New Hampshire ("the Property").
5. On July 20<sup>th</sup>, Division personnel conducted an onsite inspection of the well constructed at the residence of Paul Comeau. Mr. Comeau complained that his water had been dirty with sediment since the well had first been put into use.
6. Division staff also reviewed a video tape of a down-hole camera survey which was submitted with the complaint. The video tape was initially reviewed on July 12, 2005 and again on September 13, 2005. The down-hole camera survey revealed a void between the driveshoe at the end of the casing and the bottom of the 8-inch pilot hole (estimated by the Division to be about 12 inches or less). No impression was observed in the bedrock at the bottom of the 8-inch pilot hole which suggests to Division staff that the driveshoe was never seated into the bedrock.

7. The Division asserts that the void between the driveshoe and the bottom of the 8-inch pilot hole constitutes a violation of We 602.06 (e)(3), which requires well casings to be sealed to bedrock, in bedrock well construction.
8. Subsequent to the construction of the well on the Property by employees of Comac Pump & Well, LLC, another well contractor made alterations to the well and hydro-fractured the bedrock below it to increase water quality and supply. Ultimately, a new well was drilled on the Property by another contractor. Comac Pump & Well, LLC, and Scott Costa, are unable to determine if the violation asserted was caused by the actions of a former employee of Comac or the actions of the subsequent water well contractor.
9. In order to settle this matter, and pursuant to paragraph 13 below, the Division and Comac Pump & Well, LLC and Scott M. Costa have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
10. Scott Costa agrees to pay a fine of \$500 within 180 days of the execution of this Agreement. Credit up to the amount of the fine shall be given to Scott Costa and Comac Pump & Well, LLC for the retail value of a Supplemental Environmental Project ("SEP"). The SEP shall be well-drilling and/or pump installation services rendered free of charge in Alstead, New Hampshire in coordination with the Flood Relief Committee, the New Hampshire Water Well Board and the New Hampshire Department of Environmental Services, Water Division. Payment of the full amount of the fine, or a water well completion report and documentation from the Flood Relief Committee and/or the respondent showing that services in excess of \$500 in retail value were donated by Scott Costa and Comac Pump & Well, LLC, shall be submitted to the DES Legal Unit within 180 days of the date of execution of this Agreement by Scott Costa on behalf of Comac Pump & Well, LLC.
11. Any payment under paragraph 10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:  
  
Michael Sclafani, Legal Assistant  
Department of Environmental Services - Legal Unit  
P.O. Box 95  
Concord, NH 03302-0095
12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
13. The parties have entered into this Agreement to avoid the time and cost of litigation. Except as described in the next paragraph, this Agreement shall not constitute, be construed as, or operate as: (i) an admission of liability by Scott Costa or Comac Pump & Well, LLC; (ii) an admission by Scott Costa or Comac Pump & Well, LLC, or evidence that they violated any law, rule, regulation, policy or regulatory interpretation; or (iii) a waiver of any defense Scott Costa and Comac Pump & Well, LLC might raise in any third party proceeding.

14. By executing this Agreement, Scott Costa waives his right to a hearing on, or any appeal of, the administrative fine identified above, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction. Scott Costa shall not challenge the violation alleged herein in the context of any future proceeding by DES assessing the compliance history of Scott Costa and alleging violations of the New Hampshire Code of Administrative Rules or statutes, or in any proceeding before DES to enforce this Agreement.

15. The effective date of this Agreement will be the date on which it is signed by Scott M. Costa, the Director of the Water Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

16. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Comac Pump & Well, LLC

5-2-06  
Date

  
Scott M. Costa, Licensee

DES Water Division

  
Date

  
Harry T. Stewart, P. E., Director

This Motion to Accept Settlement agreement is granted this 11<sup>th</sup> day of MAY, 2006.

  
Michael P. Volpe, Commissioner  
Department of Environmental Services